United States Court of Appeals

for the Second Circuit

APPENDIX

76-1165

To be argued by
PHYLIS SKLOOT BAMBERGER,
ELIOT WALES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

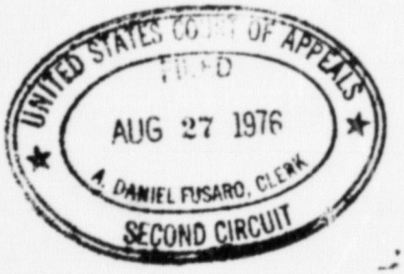
-against-

THEODORE N. CAMERIERO,
and JOHN FRANK GALANTE,

Appellants.

Docket No. 76-1165

B
P/S



JOINT APPENDIX FOR
APPELLANTS CAMERIERO
AND GALANTE

ON APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

ELIOT WALES,
Attorney for
JOHN FRANK GALANTE
122 East 42nd St.
New York, New York
10026
(212) 682-6806

WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY
Attorney for Appellant
THEODORE N. CAMERIERO
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

New York, New York
August 27, 1976

PAGINATION AS IN ORIGINAL COPY

D. C. Form No. 100
CRIMINAL DOCKET

75CR 631 JUDD & 76-1165

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: DAWSON
vs.	~~Court apptd counsel:~~ deftCameriero
MENACHEM COHEN,	Legal Aid
THEODORE N. CAMERIERO and	
JOHN FRANK GALANTE also known as "Chubby"	
	For Defendant: Galante:
	Court appointed counsel: Legal Aid

Did conspire to receive & possess a quantity of camera lenses, moving in i.c.c.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine, (Paid 1099 Cohen	2500	00	3-5-76	Paid-Fine	2500	-		
Clerk,			3-8-76	Paid to Treas.			2500	-
Marshal,			4-8-76	Notice of Appeal (Galante	5	-		
Attorney,			4-9-76	Paid to Treas			5	-
Commissioner's Court,			4-9-76	Notice of Appeal-No Fee (Cameriero)				
Witnesses,								

DATE	PROCEEDINGS
8-21-75	Before MISHLER, CH J - Indictment filed - ordered sealed by the Court - Bench Warrants ordered for defts #2 and #3.
8-25-75	Before BRAMWELL, J - case called - deft GALANTE brought into court on Bench Warrant - sealed indictment ordered opened - deft arraigned and court enters a plea of not guilty on behalf of the deft - court will assign counsel - bail fixed at $5,000.00 surety bond - court assigns Legal Aid as counsel.
8-25-75	By BRAMWELL, J - Order appointing counsel filed (GALANTE)
8-25-75	Bench Warrant retd and filed - executed.(GALANTE)
9-3-75	75 M 1460 is inserted in CR file.
9-4-75	Before JUDD, J - case called - deft COHEN & counsel J.Iannuzzi present - deft arraigned and enters a plea of not guilty - bail

75CR 631

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
9-4-75	Govts Notice of Readiness for Trial filed		
9/4/75	Notice of readiness for trial filed(CAMERIERO)		
9-10-75	Notice of Motion filed, ret. 9-19-75(deft Galante) for Discoveryand Inspection-Rule 16.		
9/18/75	Notice of motion to suppress and memorandum of law filed(GALANTE)		
/19/75	Before JUDD,J.- Case called- No appearances- Deft's motion for discovery adjd to date of trial		
10/14/75	Before JUDD,J.- Case called- Deft Galante and counsel present-deft Cohen and Cameriero not present-counsel for deft Cameriero present- counsel for deft Cohen not present-case adjd to 11/7/75 at 2:00 P.M. for hearing on deft Galante's motion to suppress-trial adjd without date		
10/14/75	Bench warrants issued (COHEN and CAMERIERO)		
10-31-75	Notice of Motion filedto required the US to disclose prior to trial the names and address of its prospective witnesses, etc and motion for suppressing evidence, etc. (ret. Nov. 7, 1975)		
10/31/75	Govt's memorandum of law in opposition to motion to suppress filed		
11/4/75	Before JUDD,J.- Case called- Deft and counsel present- deft CAMERIERO arraigned and enters a plea of not guilty- bail set at $5,000.00 surety bond- case adjd to 11/7/75 at 2:00 P.M. for suppression hearing and to 11/17/75 at 10:00 A.M. for trial		
1/4/75	Notice of appearance filed (CAMERIERO)		
11-6 75	Warrant of Removal filed received from the Southern District of Cal. (THEODORE N. CAMERIERO)		
11-7-75	Govts supplemental memorandum filed in opposition to motion to suppress .		
11-7-75	Before JUDD, J - case called - defts GaLante & Cameriero present with counsel - deft Cohen not present - Mr. Edelman's application to be relieved as counsel for deft Cameriero-motion granted - Ronald Fischetti substituted as counsel for deft Camariero - Deft Galante's motion for disclosure of names of witnesses argued - motion denied - suppressio hearing beun - hearing concluded - defts motion to suppress is denied - case adjd to Jan. 26, 1975 for trial.		
11-7-75	By Judd, J - Order filed denying motion for U.S. to disclose prior to trial the names & addressed of its prospective witnesses.		
11-10-75	Deft Galante's reply memorandum filed.		
11-10-75	Govts supplemental memorandum of law in opposition to motion to		

75 CR 631
CRIMINAL DOCKET

DATE	PROCEEDINGS
12-16-75	Before JUDD, J - case called - deft COHEN & counsel John Nicholas Iannuzzi present - deft after being advised of his rights and on his own behalf withdraws his plea of not guilty and enters a plea of guilty to count 1 - bail conditions contd. case adjd without date for sentencing.
1-16-76	Before JUDD, J - case called - deft Cameriero & counsel Ronald Fischetti & Stanley Hochberg present - Mr. Fischetti's application to be relieved argued - motion granted -Legal Aid assigned as counsel for the deft - case adjd to Jan. 26, 1976 for trial.
1/26/76	Before JUDD,J.- Case called- adjd to 1/28/76 for trial on consent
1/28/76	Before JUDD,J.- Case called- defts and counsel present-wade hearing begun-hearing concluded-deft Galante's motion to suppress identificati argued- motion denied-trial ordered and begun-Govt's motion to increas bail of deft Cameriero argued- motion granted- bail increased to $10,0 surety bond- Govt opens-deft opens-trial contd to 1/29/76 at 11:30 A.M
1-29-76	Before JUDD, J - case called - defts & attys present - trial resumed - trial contd to Feb. 2, 1976.
2-2-76	Before JUDD, J. - Case called.Defts John Galante & Theodore Cameriero present. Trial continued to 2-3-76 at 10 A.M.
2-3-76	Before JUDD, J - case called - defts & attys present - trial resumed -Defts motions to dismiss and for Judgment of Acquittal argued - motions denied - defts rest - Govt sums up - defts sum up - Govt sums up for rebuttal - trial contd to 2-4-76.
2/4/76	Before JUDD,J.- Case called- defts and counsel present-trial resumed judge charges jury-jury retires to deliverate-jury returns and renders a verdict of guilty as to both defts on counts 1 and 2-jury polled-trial concluded-jury discharged-bail set at $5,000.00 surety as to deft Cameriero-marshals to hold deft Cameriero for a Nassau County warrant- bail as to deft Galante set at $10,000.00 P.R.B. in addition to existing $5,000 surety bond- case adjd without date for sentence(GALANTE and CAMERIERO)
2-4-76	By Judd, J - Order of sustenance filed(Lunch)
2-11-76	Stenographers transcript dated 12-16-75 filed (Cohen)
2/20/76	Before JUDD,J.- Case called- deft and counsel present- deft COHEN sentenced to imprisonment for a period of 2 years-execution of senten suspended and deft placed on probation for 2½ years- special conditio of probation is that the deft to reside at Community Treatment Center for 30 days from 7:00 P.M. to 7:00 A.M.- Deft fined $2500- execution

DATE	PROCEEDINGS
	sentence stayed to 2/27/76- On motion of A.U.S.A. Adlerstein count 2 is
	dismissed
2/20/76	Judgment and Order of Probation filed- certified copies to Probation
3-8-76	Satisfaction of Fine filed. (MENACHEM COHEN)
4-5-76	Petition for Writ of Habeas Corpus Ad Prosequendum filed.Writ Issued.
	(CAMERIERO)
4-8-76	Before JUDD, J - case called - deft GALANTE & counsel E.Wales present -
	defts motion for retrial argued - motion denied - deft sentence on
	count 1 to imprisonment for 5 years pursuant to 18:4208(a)(1) with
	eligibility for parole after 1 year. On count 2 imposition of sentence
	is suspended and the deft is placed on probation for 1 year to follow
	release from custody on sentence imposed in count 1 or to follow release
	from custody on a sentence that may be imposed on any violation of
	probation charge. Execution of sentence stayed pending appeal. Deft
	advised of right to appeal.
4-8-76	Judgment & Commitment and Order of probation filed - certified copies
	to Marshal & Probation (GALANTE)
4-8-76	Notice of Appeal filed (GALANTE)
4-8-76	Docket entries and duplicate of Notice mailed to the C of A
4/9/76	Before JUDD,J.-Case called- deft CAMERIERO and counsel present- deft
	sentenced to imprisonment for 4 years to run concurrent on counts 1 and
	2 pursuant to T-18 U.S.C. Sec. 4208(a)(2)- Court recommends that Atty Gen
	permit sentence to be served in a state institution- deft advised of his
	right to appeal- notice of appeal to be filed in format pauperis
4/9/76	Judgment and Commitment filed- certified copies to Marshal
4/9/76	Financial affidavit filed (CAMERIERO) (
4/9/76	Notice of appeal filed- no fee(CAMERIERO)
4/9/76	Docket entries and duplicate of notice of appeal mailed to court of appea
4/12/76	Writ retd and filed- executed (CAMERIERO)
4-15-76	Order received from the Court of Appeals that the record on appeal
	be docketed on or before June 4, 1976 (John Galante & Theodore Cameric
6/4/76	Record on appeal certified and handed to Joan Gill for delivery to court
	of appeals

ATTEST: A TRUE COPY
DATE: JUN 4 1976
CLERK
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AUG 21 1975

TIME A.M.
P.M.

- X

UNITED STATES OF AMERICA

- against -

MENACHEM COHEN,
THEODORE N. CAMERIERO and
JOHN FRANK GALANTE, also known
as "Chubby",

Cr. No.
(T. 18, U.S.C., §371
T. 18, U.S.C., §659 and
T. 18, U.S.C., §2)

Defendants.

- X

THE GRAND JURY CHARGES:

75 CR 631

COUNT ONE

On or about and between the 31st day of March, 1975 and the 11th day of April, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby", did knowingly and wilfully conspire to commit an offense against the United States, in violation of Title 18, United States Code, Section 659, by conspiring to wilfully and unlawfully receive and possess a quantity of NIKKOR camera lenses having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen while moving as a part of and constituting a foreign shipment of freight from Tokyo, Japan to Garden City, New York, the defendants knowing the same to have been stolen. (Title 18, United States Code, Section 371).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby", committed the following:

OVERT ACTS

1. On or about the 31st day of March, 1975 the defendant MENACHEM COHEN and the defendant JOHN FRANK GALANTE, also known as "Chubby" met in the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

2. On or about the 31st day of March, 1975 the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby", placed a quantity of NIKKOR camera lenses in a hidden area behind a secret panel in premises located at 1662 Pitkin Avenue, Brooklyn, New York.

3. On or about the 10th day of April, 1975, the defendant MENACHEM COHEN and the defendant JOHN FRANK GALANTE, also known as "Chubby" met in the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

4. On or about the 11th day of April, 1975, the defendant THEODORE N. CAMERIERO drove a truck to the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

COUNT TWO

From on or about and between the 31st day of March, 1975, and the 11th day of April, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO and the defendant JOHN FRANK GALANTE, also known as "Chubby" did wilfully and unlawfully receive and have in their possession approximately Fifteen (15) cartons of NIKKOR camera lenses, having a value in excess of One Hundred Dollars ($100.00), which goods had been stolen from the Greenpoint Terminal Warehouse, Inc. located at 49 Noble Street, Brooklyn, New York, while moving as a part of and constituting a foreign shipment of freight from Tokyo Japan to Garden City, New York, the

defendant MENACHEM COHEN, the defendant THEODORE N. CAMERIERO, and the defendant JOHN FRANK GALANTE, also known as "Chubby", knowing the same to have been stolen. (Title 18, United States Code, Section 659 and Section 2).

A TRUE BILL.

FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

THE COURT: Good morning, Ladies and Gentlemen.

Transportation is better and I am glad you are all here as early as you are. I am happy that we haven't lost anybody in this period of time. However, we might loose somebody permanently on the jury.

Gentlemen at Counsel table, Mrs. Leach, Ladies and Gentlemen of the jury.

You have heard the argument of Counsel analyzing the evidence, and now its my duty to give you instructions on the law which will include general principles that apply to all criminal trials,and something about the nature of the charges in this case. And the Rules

that are applied in evaluating the evidence. And something about the evidence in the case. And finally something about how you should go about reaching a verdict.

It is your duty as jurors to follow and apply the law as I have given you, because you are the sole judges of the facts.

You are to perform your duty without bias or prejudice against the parties, or sympathy.

The law presumes a defendant is innocent of a crime, and so the law permits nothing but legal evidence to be presented before a jury to be considered in support of the indictment.

This presumption of innocence is enough in itself to justify an acquittance unles the jurors are satisfied beyond a reasonable doubt of the defendant's guilt on a particular count from all of the evidence in the case

You have heard so much about reasonable doubt, and I am just going to start at that point.

Reasonable doubt is what it says. It is a doubt based on reason and common sense arising from the state of evidence, or from the absence of elements on an important point.

But a reasonable doubt doesn't mean a doubt beyond all possible doubt. It is more that anything can

be proved to an absolute certainty, and the law does not require this.

One way the Courts have in describing what reasonable doubt refers to, is the type of doubt that would make you hesitate to act in your own important affairs.

This rule of proof beyond a reasonable doubt operates on the whole case. It doesn't mean each bit of evidence by itself must be established beyond a reasonable doubt, but it means that the sum total of the evidence must satisfy you beyond a reasonable doubt, or else you must acquit.

Finding a man to be guilty of a felony and subject to a criminal penalty, naturally it is a serious matter committed to you.

You have a right to consider whether you have a reasonable doubt. But if you are convinced of the guilty of either defendants on either Count, it is your duty to bring in a verdict of guilty, and not be swayed by sympathy.

The indictment is, as I have said at the beginning, is just a formal method of accusing a defendant of a crime. It is not evidence of any kind. The fact that the Grand Jury makes an indictment doesn't create any presumption of guilt.

The defendants pleaded not guilty to the issues

which you must decide.

It is never the duty of a defendant in a criminal case to produce any evidence.

He has a constitutional right to testify or not to testify as he sees fit.

If the defendant chooses not to testify that is not evidence of any guilt or wrongdoing, and you shouldn't consider or discuss it in your deliberations.

The indictment in this case is in two Counts which I will read to you.

Count 1 charges on or about and between the 31st day of March, 1975, and the 11th day of April, 1975, both dates being approximate and inclusive, within the Eastern District of New York -- and we are in the Eastern District, the defendant Menachem Cohen, the defendant Theodore N. Cameriero and the defendant John Frank Galante, also known as "Chubby", did knowingly and willfully conspire to commit an offense against the United States Code, Section 659, by conspiring to willfully and unlawfully receive and possess a quantity of Nikkor Camera lenses having a value in excess of one hundred dollar ($100. which goods had been stolen while moving as a part of and constituting a foreign shipment of freight from Tokyo, Japan to Garden City, New York, the defendants knowing the same to have been stolen.

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the

the defendant Menachem Cohen, the defendant Theodore N. Cameriero and the defendant John Frank Galante, also known as "Chubby", committed the following:

1. On or about the 31st day of March, 1975, the defendant Menachem Cohen and the defendant John Frank Galante also known as "Chubby" met in the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

2. On or about the 31st day of March, 1975, the defendant Theodore N. Cameriero and the defendant John Frank Galante, also known as "Chubby", place a quantity of Nikkor camera lenses in a hidden area behind a secret panel in premises located at 1662 Pitkin Avenue, Brooklyn, New York.

3. On or about the 10th day of April, 1975, the defendant Menachem Cohan and the defendant John Frank Galante, also known as "Chubby" met in the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

4. On or about the 11th day of April, 1975, the defendant Theodore N. Cameriero drove a truck to the vicinity of 1662 Pitkin Avenue, Brooklyn, New York.

Count 2. From on or about and between the 31st day of March, 1975, and the 11th day of April, 1975, both dates being approximate andinclusive, within the Eastern District of New York, the defendant Menachem Cohen, the defendant Theodore N. Cameriero and the defendant John Frank Galante, also known as "Chubby" did wilfully and unlawfully receive and have in their possession approximately fifteen(15) cartons of Nikkor camera lenses, having a value in excess of one hundred dollars ($100.00), which goods had been

stolen from the Greenpoint Terminal Warehouse, Inc. located at 49 Noble Street, Brooklyn, New York, while moving as a part of and constituting a foreging shipment of freight from Tokyo, Japan to Garden City, New York, the defendant Menachem Cohen, the defendant Theodore N. Camoriero, and the defendant John Frank Galante, also known as "Chubby", knowing the same to have been stolen.

And that is the charge in violating Title 18 United States Code, Section 659, and Section 2.

Count 1 refers to Section 371 of the Criminal Code which says:

"If two or more persons conspire to commit any offense against the United States or defraud the United States and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined, imprisoned or both."

Counsel said something about the estension of punishment, and I didn't put it in my charge because that is my responsibility if you bring in a verdict of guilty, and this is done within the limits of what the law permists.

The illegal act which is referred to as unlawful, refers to Section 371, and is the one that is covered by the second Count which refers to 18 US Code.

Now we go to section 659 which I will read in part.

"Whoever embezzles, steals, or unlawfully takes, carries away, or by fraud or deception obtains from any platform, depot, aircraft, airport, motortruck, or any other vehicle with intent to convert to his own use any goods or chattels moving as nor which are a part of or which constitute an interstate or foreigh shipment of freight, express or other property, or whoever buys or receives or has in his possession any such goods or chattels, knowing the same to have been stolen, shall in each case be fined or imprisoned or both."

And again I will skip the amount of the fine or imprisonment.

And the second Count refers also to Section 2 of the Criminal Code; "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as principal."

Now, when anybody helps to commit a crime he can be punished just the same as the man who actually did the physical work involved in the crime.

The first Count, as I said is conspiracy. I think I mentioned earlier that that is what we call the elements of the crime.

There are three elements of that that you have to find with respect to conspiracy.

First, that two or more people agreed to do an illegal act.

Second, that the particular defendant participated knowing

And third, that one of them did something toward carrying it out.

It is not necessary that each person be present at any time during the conspiracy. It is not even necessary that the conspiracy be successful. And it is not necessary to prove a precise agreement because people who make conspiracy don't put it down in writing where the Government can find out what the exact terms are. It is simply a question whether you find there has been a combined meeting of the minds to commit an illegal act.

Now, the illegal act here is the knowing possession of stolen property.

And for Count 2 you will have to find these five elements:

First, that there was a stealing.

Second, that the goods were at the time moving as part of the foreign shipment.

Third, that they were worth more than $100.00 because that affects the amount of punishment.

Four, that the defendant either had the goodsin his possession.

And fifth, that he knew that the goods were stolen.

It is not necessary for the Government to prove the exact day or the exact amount of the goods as long as the facts are sufficiently appropriate so that the indictment told the defendant what he is charged with and he would know how to defend it.

Knowledge is one of the important things in a crime. And basically an act is knowingly done if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

And I will tell you something more about the way to determine whether a man does know or not know after I go back to the conspiracy question.

Membership is not established merely by evidence that the defendant told the buyer how to make contact with a willing seller with respect to stolen articles, or by evidence of mere association of a particular defendant with others who may be violating the law.

In order to find the defendant guilty beyond a reasonable doubt, you must find that the defendant knew the object or the purpose of the conspiracy and joined in in order to make it succeed.

A particular defendant doesn't become a member merely because he happened to act in a way that furthered the object or the purpose of the conspiracy.

The evidence must be established beyond a reasonable

doubt is that the alleged conspiracy was knowingly formed and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including one or more of the defendants were knowingly members of the conspiracy.

Even if you believe the Government has proven the existence of the conspiracy beyond a reasonable doubt, the person who has no knowledge of the conspiracy but happens to act in a way that furthers some object of the conspiracy, does not thereby become guilty. The defendants must know the business of handling stolen goods before you can convict him.

And he must have participated in the plan with the intent to help it succeed.

In determining whether or not the defendant or any other persons were member of the conspiracy, you are not to consider what others may have said or done. That is to say whether the person is a member of the conspiracy it must be by evidence as to his conduct, what he himself knowingly did. After that, then you can consider what any member of the conspiracy said during the existence of the conspiracy.

The law presumes every man to intend the natural

consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts.

No formal agreement is necessary to constitute an unlawful conspiracy. The conspiracy may be found in a course of dealing or other circumstances as well as in an exchange of words. Where the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, the conclusion that conspiracy is established is justified.

It is not essential that each conspirator participate in all the activities. It is enough that the conspiracy is established and that the defendant knowingly contributes his efforts in furtherance of it; A single act may be enought to draw a defendant within the scope of the conspiracy, if the jury is satisfied beyond a reasonable doubt that the defendant knew of the conspiracy and associated with it to try to help it succeed.

Now, the Charge in the second Count is possession. And the law recognizes two types of possession. If I have a gavel in my hand I possess it just as somebody handling that box. But there is also what is called constructive possession which means the power to direct

how something will be handled. So, if you were to believe that Mr. Galante had the power to tell Mr. Carneiero or Mr. Cohen what to do with the boxes, he would have what we call constructive possession of the boxes, even though he wasn't there at the time they were actually handled.

But in order to find that the defendant had actual possession you must find that he exercised or had power to exercise dominion and control over the goods — to control their prices or their destination. And if you find that the defendant had dominion and control, then you will find that he had actual possession over the goods.

Now, if that somebody was in actual possession over the stolen good, you must find that he had dominion and control or the power to exercise dominion and control which is actual possession.

Now, knowledge is a state of mind and jurors have a right to find state of mind.

Mr. Wales yesterday was trying to interpret Mr. Manny Cohen's state of mind from the things he did and the things he said.

You have a right as jurors to determine the state of mind from all of the circumstances in the case.

It is not possible to look into a man's mind to see what went on, but you can take into consideration all of the facts and circumstances shown in the testimony and the exhibits and determine from all of those facts and circumstances whether requisite knowledge and intent was present at the time in question.

Direct proof is not necessarily knowledge, and intent may be inferred from all of the surrounding circumstances.

Mr. Manny Cohen gave direct testimony as to what he said was Mr. Calante's state of mind. He didn't give any with respect to Mr. Cameriero. And you have to interpret all of the facts and circumstances in determining the facts.

Moreover, a person can't willfully remain ignorant of the facts that important and material who is punishable through his conduct and escape punishment that way.

The defendants can say they didn't know the goods were stolen. If you find from all the evidence beyond a reasonable doubt that they had a conscious purpose to avoid knowing the fact by closing their eyes to the facts should have caused them to investigate.

If you find from all the evidence beyond a reasonable doubt but either defendant believed that he handled

stolen goods or deliberately and consciously tried to avoid learning that the goods were stolen so that he could say if he was caught, that he didn't know, deliberate avoidance of positive knowledge is the equivalence of knowledge. In other words, you can find that either defendant had actual knowledge. If you find that either defendant actually knew the goods were stolen, that the deliberately closed his eyes to what he had reason to believe was the fact. But I should emphasize that requisite knowledge can't be established by showing negligence or foolish or stupidity on the part of the either defendants.

Now, I spoke of aiding and abetting, and there is a rule with respect to that very much like what I said with respect to conspiracy.

It is not just enough to be around or to know what is going on in order to find that the defendants aided and abetted another in committing an offense of possession of stolen good. You must find from the evidence beyond a reasonable that the defendant associated himself with the venture voluntarily. That he did something affirmative to help it succeed at some time. That he had a stake in the venture.

If you find that the defendant Colombo merely knew that Manny Cohen was in possession of the stolen

goods and just had some happenstance or association that brought him there on April 10th, If you believe he was there on April 10th but he was not involved in this particular venture, the Government hasn't met its burden of proof with respect to showing he aided and abetted and you should find him not guilty on Count Two.

The burden is on the Government to prove each of the essential element of each Count I have described beyond a reasonable doubt.

You can't infer one element from the others. For instance, the first three elements of the Second Count as to the good being stolen. The goods being in a foreign commerce, and being worth more then $100.00. You might find that easily, but that doesn't help you find that the defendant knew that they were stolen and participated with the knowledge.

If you have a reasonable doubt about any element you must acquit as you have a duty so, if you are not convinced beyond a reasonable doubt.

Now, something about evaluating the evidence.

Generally there are two types of evidence that comes before a jury.

One is direct evidence like the testimony of an eyewitness.

The other is indirect or more properly, circumstantial evidence which is the proof of a chain of circumstances that logically point to the existance or non-existence of certain facts.

The direct testimony is Mr. Cohen's statement that Mr. Galante told him that the goods were stolen. And direct testimony is the fact that Mr. Galante, according to the agents as well as Mr. Cohen, that Mr. Galante was not there on April 9th, or April 11th.

Circumstantial Evidence if the fact that Mr. Galante was there on April 10. And circumstantial evidence that the Government points to is the fact that Mr. Cameriero when he arrived on April 11th came from the Bristol Street direction from the west instead of Chester Street direction from the east where the truck was parked.

You have a right to determine what inferences to draw from these items of circumstantial evidence.

As a general rule, the law makes no distinction between direct and circumstantial evidence.

Circumstantial evidence in itself is enough to establish guilt if you find proof beyond a reasonable doubt on the other hand. Circumstantial evidence doesn't need to exclude every reasonable hypothesis of innocence. It is only necessary that you be satisfied

of the defendant's guilt on all of the evidence in the case, both direct and circumstantial.

Of course, you should weigh the inferences tending to defeat the Government's claim just as well as those tending to support the Government's claim.

Ladies and Gentlemen of the jury, you have to recognize the difference between inferences that you draw from the facts that are established and guesses that you make jumping from one point to another.

The law doesn't authorize a conviction of mere suspicion, but only on the basis of evidence of guilt beyond a reasonable doubt.

And a doubt can arise from the lack of evidence on the points. So you have the job of distinguishing between the inferences which are fair and common sense statement as to what you think the evidence indicates, and not guess as to something that is not actually in the evidence.

Now, you come also in the case to the question of determining the credibility of the witnesses before weighing their testimony. And in a criminal case the determination of the truthfulness rests with the jury or twelve who are chosen to eliminate prejudice and who is selected at random so as to be the cross section of the community.

When you weigh the testimony of witnesses you are to consider their relationship to the Government, and their relationship to the defendant. Their bias or interest in the outcome of the case. The manner while testifying. Their candor and intelligence. As you have observed you can consider the extent to which any of these witnesses have been accurate or contridicted by other credible evidence -- Whether there were any inconsistancies with in the testimony of any witness either on direct or cross examination.

If a witness lies — if he lies on the witness-stand you certainly have the right to say you don't want to believe anything. I think there is a claim here that Mr. Cohen lied to the FBI and to the U.S. Attorney when he was first arrested on April 4th. You should regard everything he said with skepticism. You have a right either to reject everything, or to accept and reject others, or to accept all that he said on the witness-stand as you determine and your best judgment.

If there are inconsistancies in a witness' testimony a changing between what was said at one time and another, you can similarly decide to throw out all or part of his testimony. But you should consider what are inconsistencies relating to details or important

parts, and think back in your own experiences which you have heard two or three people tell about the same occurrance, or when somebody in the family told about the same occurrance two or three times, whether they are acts in conformityon every detail when applied to the witnesses. Whether inconsistancies that were noted in Mr. Cohen's testimony at various times indicated that he was lying and couldn't tell his story straight, or whether that is a human frailty of not remembering exactly everything that he said, or everything that took place in the proper order.

And you can consider whether there is even human frailty of the Court Reporter because there is some emphasis on the question whether he said "guy" or "guys" when he was testifying before the Grand Jury, and as to whether it was reasonable for him to say that the Grand Jury Reporter made a mistake, and having in mind his accent and the speed at which he talks at times. You can credit it or not credit it as to what he sai It is your judgment that determines.

You are not to give any greater weight or creditibility to the testim ny of a witness solely because of the fact that he is a Government agent. The testimony of a Government agent should be evaluated in the same manner as you evaluate the testimony of any

other witnesses.

Now, we have some special rules about Mr. Cohen because he was an accomplice, and because he is a defendant in the case. And I will tell you some [illegible] of those.

An accomplice is not barred from testifying. As a matter of fact, sometimes the Government has to use them. The fact that the Government has to use them doesn't mean that they have to be believed. If a witness has committed a felony you can consider that he may be more like to lie on the witness stand. And where he is a defendant in the case and he can be punished for his own offense, he may be susceptible to suggestions by the Government to try in favor of the Government in order to avoid some degree of punishment.

Bearing in mind when you have a conspiracy it is published in the newspapers. It is done in secrecy with just a few people involved. Conspirators don't proclaim their intention openly. But there may be motivations of accomplices to place the responsibility on others than themselves.

So the rule is, an accomplice's testimony should be examined closely and scrutinized with care.

You can convict on the uncorroborated testimony of an accomplice if you believe it beyond a reasonable

doubt. You should compare the accomplice's testimony with the other facts that you find existing in the case and see whether the evidence is corroborated or wasn't, and in that, determine what weight to give to it.

If you find, or if you believe a witness was induced to testify by hope that he would be rewarded leniency and/or benefits if he implicated the defendant in the crime. You should consider that fact in the Charge and weight should be given to the testimony and see whether you can reconcile it with the truth, or reject it.

You can also consider an accomplice who is testifying could think that it would help him to bring in an innocent man, and if the Government finds out that the attempted corroboration was all faking and went about doing nothing, it is not an easy task and you have but one duty that is committed by law to the jury.

And it is not a question of whether Mr. Cohen is my kind of man. You are not to judge him by names that he was called. You judge him by the character of his testimony and the effect it had on you in the light of all the rest of the testimony in the case.

There was a lot of discussions in the summations

about Mr. Galante's prior conviction. I think it was a little overly done. As I said at the beginning when it came in, it is not brought in to show that he is a bad man. It was brought in for such weight as you may want to attribute to it with reference to his knowledge as to whether the goods were stolen — his motive for being on the premises on April 10th, if you believe he was there and the intent that he may have had and any of the acts in the case.

Now, there is another rule of law that applies which we call false exculpatory statements.

If a man gives a false excuse when he is first arrested, the jury may use that to support inferences of his consciousness of guilt, and he was trying a way to get out.

You don't have to draw that inference, but if you do the false exculpatory statement relates to Mr. Cameriero, and theinference from that doesn't carry over to Mr. Galante. But you have to decide whether there is a reasonable explanation, and whether there would be an explanation even without the defendant testifying; or whether they do indicate enough consciousness of guilt to support the finding of guilt beyond a reasonable doubt.

I think I said a couple of times during the

trial that you are to decide the case on the answers that come from the witnesses, and not from the questions that are put.

You cannot draw any inference that Mr. Cohen was dealing in other stolen goods from the facts that Mr. Wales asked him questions about Johnnie and Charles and other people. As a matter of fact, if the Government had any knowledge that he had other dealings in stolen goods, the Government would have an obligation under the law to tell the defendants about that so they would be able to prepare their defense as thoroughly as they can.

He might have been engaged in other stolen goods operations without the Government knowing about it.

There was some inference from the testimony from questions asked and you can draw inference in that respect, but that should be based on the testimony and not on the question to which the witnesses answered, no.

We had some testimony about fingerprints. And I will just tell you that experts' testimoney is from normal people who testify to facts and not opinions. But whether it is somewhat extrinsic, the Court does allow expert testimony, and you can accept it or reject the expert fingerprint testimony and you can decide whether the facts support it and the reason he gave

was equitable and how much weight to give to what he said.

There is another rule — I don't know whether a subjective rule of law, or rule of evidence, but a rule of logical inference to some extent. And that is, if a man has possession of stolen goods shortly after they were stolen, you can infer from his possession knowledge that they were stolen, unles there is some reasonable explanation how they came into his hands, and the explanation doesn't have to come from facts. The explanation can come from free facts and circumstances.

So the fact tht Mr. Cameriero had these packages in his hands on March 31st, and April 11th, might justify your inferring from the facts that this was only ten days or two weeks after the goods were stolen, he must have known they were stolen — or you can infer that he was just a poor truckdriver who didn't know anything about it. But that is your province and I can't tell you what to do with respect to that.

And similarly if Mr. Galante was there directing the placement of the good in the basement on March 31st, when they were first brought in, if you find from this actual or constructive possession, you can infer that he he must have known that they were stolen. But it is an inference that you can draw, or you can refuse to draw

depending on all of the facts that are there.

You can perhaps draw a stronger inference with respect to Mr. Galante if you believe that he was there as sort of a the leader of the group. And there may be instances where you would expect the leader of the group would let other people handle the goods as much as possible to keep himself far removed from guilt if he were caught or observed.

There was a reference to Mr. Cameriero changing names. A person has a legal right to change his name if he is not doing it for deception. And you can determine just what inference in this case you may want to draw from the facts that the defendant's real name is Frank Paul Ramsey, and not Theodore Cameriero.

There was talk about Mr. Cohen fear of deportation. The law is that after you have been in the United States for five years you can't be deported for one crime or a series of related crimes. How much of that law he knew at the time, I don't know, but is a fact that you may consider.

Now, when you examine Mr. Cohen's testimony you can consider his state of mind and whether his motive was to incriminate someone else. And the question is, as I mentioned, how far he has to be honest in order to win the approval of the Government he was yar for.

You can bear in mind the fact that he lied when he was first arrested and he may have lied afterward when he confessed.

You probably all have had experience with people who don't admit to something when caught the frist time. And may be they don't admit to all that they did even the second time. But the fact that he lied in the beginning is something you can use to infer that he lied later; but it doesn't necessarily prove that he lied when he was on the witness stand.

There is a suggestion that Mr. Cohen just insisted that Mr. Galante was there so that the Police or the FBI could have somebody there to arrest. And you should consider that as bearing and determining whether the purpose of what he told Mr. Boling and Mr. Colgan on April 11th about the alleged telephone call from Mr. Galante was all lies, or whether it is something that happened and whether he helped confirm this in the testimony that he gave on the witness stand.

I think Mr. Adlerstein pointed out that if Mr. Cohen was inventing a false story he could have very well invented a better one against Mr. Cameriero. May be that helps to support it, or may be it was more of a devious device to lend credibility, but you can determine that.

The real question is whether Mr. Cohen, as you observed him, is anxious enough to protect himself so he can lie an innocent man into jail.

As to Mr. Cameriero, Mr. Cohen didn't testify about his knowledge. He only testified that he was there when the good were brought in and when they were taken away.

And Mr. Armstrong didn't testify that he saw Mr. Cameriero go into the store on April 10th, when Mr. Cameriero says he did go in and bought some deodorant and offered the job of coming in with a truck the next day. Mr. Armstrong may have missed somebody who went in, or it may be that the observation wasn't sufficiently continuous for you to believe some of that evidence or that Mr. Cameriero was lying when he told the FBI at the beginning that he had gone to the store and had been offered a job.

I have talked about some of the evidence partly as an illustration and partly as trying to balance what the two-sides counsel have said. What I have said doesn't mean that no other evidence is not to be considered. It doesn't mean that I'm giving you an opinion as to whether any of the defendants were guilty or not guilty. What I say and what counsel say about the evidence is not controlling you. You have the right to use your own

recollection in analyzing the evidence and reaching a verdict.

And so a few words on how you go about reaching a verdict.

Your verdict must be unanimous on each count. All twelve have to agree. It is a good idea to discuss the evidence rather fully even before you decide you need something read from the record because it is your own recollection of the evidence.

Now, you must follow my instructions on the law, but you don't have to follow anybody else statements of what the testimony was. If you want to have some of the testimony repeated I will get the court reporter and gather the people and try to have read those portions that you want. If you want to look at some of the Exhibits you can ask for them and they will be sent into the jury room.

When you go to the jury room Mrs. Leach will be your spokeman or forelady, or forechairman, or whatever you want to call it and preside over your deliberations. She should try to make sure that everyone has a chance to talk, and generally not more than one person will talk at a time.

During your deliberations you will assume the attitudes of judges, not partisans or advocates, and

in that role you will be make a high contribution to the administration of justice.

You should report a verdict on both Counts.

You will have a form of verdict so as to make it simple for you to take the two defendants on each of the two Counts with two possible verdict on each of them.

You can find a defendant guilty or not guilty on one, or guilty on one count and not guilty on the other; and one defendant guilty on one and not the other, because with Mr. Cohen admitting that he was an accomplice you have two conspiracies even if one of the defendants you should not find guilty.

If you want the Exhibits or anything there will be a Marshall outside the jury room door. And you can hand him a note when you have reached a verdict. Give the Marshall the note saying you have reached a verdict. Then Mrs. Leach will report the verdict orally in the Court, and the Clerk will probably poll the jury which means he will ask all twelve whether it is, in fact, your verdict so we all can be sure it is unanimous.

Again, in determining the guilty or innocence please don't give any consideration to the matter of punishment, that is my responsibility.

You are each individual and are entitled to your own opinion, and nobody has the right to ask you to give

Form A. O. 93 (Rev. Apr. 1973) Search Warrant

up an honest opinion because the nature or purpose of deliberation is to listen. You shouldn't hesitate to change you initial opinion if you are convinced that there was evidence that you didn't think of, or didn't give sufficient weight to.

I will have the Clerk send in luncheon menu so you can order lunch which probably will come around 11:00 o'clock. If you bring in a verdict before I will let you stay and eat your lunch. If you don't we will all go out to lunch between one and two, and I will listen to you in the afternoon.

Now, I may have to call you back because counsel have a right in this kind of a criminal case after I have spoken 40 minutes to see if I mis-spoken -- and a judge can do that, or if I left something out, and I will consider that as to whether I will call you back for any supplement to the instructions; but I assume there isn't.

Just let me remind you of the oath you took at the beginning, without fear or favor to any man, you will well and truly try the issues between the parties according to the evidence given to you in Court and the law of the United States.

The next step is to swear in the Marshalls.

(Whereupon, the Marshalls were duly sworn by

the Clerk.)

Mr. Simmons and Mr. Kalman, will you come and get your cards and then you can go back to the jury room and without talking to the other jurors, take your things. And I think this is their third week so they are through. And if you want to, you may go down and pick up a certificate of your services. You may want to do that.

The Marshalls will now take the jury to the jury room.

(Whereupon, the jury was excused from the Court room.)

THE COURT: Mr. Adlerstein, has the Government an acception?

MR. ADLERSTEIN: No, but, of course, I think the defense has.

THE COURT: Mr. Chrein.

MR. CHREIN: The defendant Cameriero has no acception to the charge. The only possible trouble -- and I know this the Court's practice, but I get somewhat unease about the fact that the alternants went in before the jury was allowed to commence their deliberations.

THE COURT: Well, I told them not to talk to the jurors.

MR. WALES: I'm going to take it one step further,

and that is in discharging the alternant jurors you send them on their way. It is quite clear that once the jury began their deliberations that no one other than the twelve jurors are to be in there. The alternants are not to be in there. And I would ask Your Honor to specifically discharge the alternants.

THE COURT: I have discharged them. I said to just go in and get their things— their coats.

MR. WALES: I'm sorry.

THE COURT: Anything else, Mr. Wales?

MR. WALES: Yes. Now, lets go on with regard to the accomplice charge. Your Honor told them to weigh it with care the accomplice's testimony. I believe the language of the Second Circuit is to weigh the testimony of an accomplice with caution and with care. I think what you said was to weigh it with care and scrutinize it with caution. And I specifically request that you direct the jury in that regard to the accomplice's testimony that they weigh it with both caution and with care.

THE COURT: Well, I don't think there is a difference --weigh it with care and scrutinize it with caution.

MR. WALES: Well, the Second Circuit has used the language, and I would request the Court to use both

caution and care.

THE COURT: What is the difference, please?

MR. WALES: It is not my job, Your Honor, to sit in judgment of the Second Circuit.

THE COURT: We can have the Court Reporter go back and find it.

MR. WALES: I would ask you to charge them as I requested. That is number eight, and that is the matter of Cohen as an accomplice.

THE COURT: I told them that he was.

MR. WALES: Now, Your Honor failed to give them my request to charge number nine. And I specifically request Your Honor to charge this to the jury, that the fact that Manny Cohen did plead guilty is in no way indictive or evidence that the defendants at trial may be guilty of the charges. That the evidence of Cohen's plea of guilty was admitted to be considered by the jury in weighing the credibility of Cohen as a witness. And considering what possible motive he may have in testifying against the defendants.

THE COURT: I guess I didn't give that. That was simply an omission on my part.

MR. ADLERSTEIN: I believe Your Honor did discuss at length the way in which they were to view Mr. Cohen's testimony. I think Your Honor made it clear the

standards that they were supposed to use.

THE COURT: Well, I certainly did indicate that he had pleaded guilty, and it had nothing to do with whether either defendant were guilty.

MR. WALES: But Your Honor did not tell them that the plea of guilty was admitted for the limited purpose to reflect upon the credibility of Mr. Cohen, and that it was limited to that only and for the purpose. I think it is important that the jury be instructed that Cohen's plea of guilty is in no way evidence as to what the guilt or innocence of the defendants at trial is. And so I request Your Honor --

THE COURT: Well, that is what is called the work of supererogation.

MR. ADLERSTEIN: May I be heard on that?

THE COURT: Yes.

MR. ADLERSTEIN: I think for Your Honor to bring them back after the thoroughness which Your Honor did cover the point as to how they were to view Mr. Cohan's credibility that would be recalling special attention, and would blow it out of proportion, and would call too much attention to it. There are other things for them to think about, and it may make them think you are over riding an important issue that they have to consider.

THE COURT: In some context you are accepting the obvious in numbering. I would have given it if I had had it in mind. Some how I failed to check it.

Anything else?

MR. WALES: I accept Your Honor's failure to give the first paragraph of Galante's request to charge number one.

And I specifically request Your Honor, too, with regard to charging the jury that the prosecution is no different from any other party in Court. And that the jury is to give no greater weight to the evidence or to their argument merely because in this Court they are called the United States of America.

MR. ADLERSTEIN: Your Honor —

THE COURT: I said that the Government's agents don't get any extra credit.

MR. ADLERSTEIN: I think both the Court and the Government in this case has referred to the Government as the Government and not the United States.

MR. WALES: You did state you were going to give that request to charge when we discussed it.

THE COURT: I omitted it.

MR. WALES: And I'm entitled to accept Your Honor's failure to give it.

THE COURT: All right.

MR. WALES: I accept Your Honor's statement near the end of your instructions that the real question with regard to the credibility of Manny Cohen is whether he was anxious enough to lie to protect himself, because I don't believe that is a factual correct contention. I believe that the defense's contention at all times was that Manny Cohen was anxious enough to lie to protect his sources. I think we made that crystal clear in the summations and every contention in the cross examination, Your Honor.

THE COURT: What I said was he ready to lie some innocent man into jail.

MR. WALES: That was another statment I made, but I did made the statement if he was anxious enough to lie to protect himself.

THE COURT: I don't think —

MR. WALES: I think the real question as framed by me is whether he was anxious enough to lie to protect his sources.

MR. ADLERSTEIN: No, there was no evidence in this case that Mr. Cohen had any other sources other than Mr. Galante.

MR. CHREIN: I believe there was.

THE COURT: There were assertions that he might because of the trip to New York.

MR. CHREIN: I believe John was called.

MR. WALES: John was brought up by the Government.

MR. ADLERSTEIN: There is no testimony that he ever saw John.

MR. WALES: The defense's contention is that it was supported by argument. Ithink the way Your Honor has phrased the question to the jury in term of the real question it is not factually accurate. I ask you to call the jury back and say to them the real question whether he was anxious enought to lie to protect his sources.

MR. ADLERSTEIN: Calling them back in and emphasing that in such way I think would be very —

THE COURT: I will call them back. But first let's find out the words. Everybody be quiet so that the Court Reporter can go back and find where I talked about care and caution.

(Whereupon, the Court Reporter read back to the Court and Counsel the Court's instructions as requested.)

THE COURT: Should be examined closely and scrutinized with care.

MR. WALES: I would ask your Honor to use the language of the Second Circuit.

THE COURT: All right.

MR. WALES: With regard to the instructions with regard to the utilization by the jury of Galante's prior conviction. I do ask Your Honor to give the full instruction that you gave during the course of the trial when the evidence was first admitted.

THE COURT: What did I leave out?

MR. WALES: Your Honor at that time in addition to what you told the jury just now, you told the jury that the prior conviction was not a related case. You told the jury that they are not deciding the guilt or innocence in that 1972 case. You told the jury that they are not to be concerned with either good character or bad character of the defendant. That the conviction in and of itself was not evidence of good character or bad character. And I do ask Your Honor to instruct the jury at this time along those lines. Your Honor did state just a few moments ago in the instructions, you did instruct the jury that it was not admitted for the purpose of showing that the defendant was a bad man. I think that is an unfortunate way of putting it. I think the more appropriate way should have been whether he is a good man or a bad man. You only showed bad man.

THE COURT: You think my charge could be improved —

MR. WALES: I don't mean it that way, but I do

think that the weight Your Honor gave it was to emphasize the bad man feature. And I do request that it be done along the way Your Honor did it in the trial. That neither good or bad character in and of itself is evidence, and the jury is not to consider it.

MR. ADLERSTEIN: Your Honor did cover that point at trial.

THE COURT: I'm not going to give more on that.

MR. WALES: I certainly accept Your Honor's failure to give what I just requested.

And I do request Your Honor to instruct the jury with regard to evaluating the testimony of Manny Cohen in as much as he is an accomplice, and the jury is to weigh his testimony with caution and with care.

THE COURT: I will bring in the jury and tell them that's what the defendant wants.

MR. ADLERSTEIN: If Your Honor is going to charge them along or on that basis that Your Honor charge them that it does not mean that Your Honor agrees that there is no theory that there has been another supplier in the case.

THE COURT: Yes. All right, bring them in.

MR. WALES: Excuse me, but I wish to comment on that.

THE COURT: Comment afterward.

MR. WALES: I believe, Your Honor —

THE COURT: Bring in the jury. I have heard enough.

(Whereupon, the jury was brought in and seated in the jury box.)

THE COURT: Mrs. Leach, and members of the jury, I'm sorry to bring you back again, but the defendant thought — Mr. Galante's counsel thought I had not used the proper words in my charge. And I said with respect to the testimony of Mr. Cohen as an accomplice that it should be examined closely and scrutinized with care. The words the Courts sometimes use, it should be weighed with caution and with care. If caution and care mean something more than closely and scrutinize then caution and care is what you should use.

I might add just for completeness, Mr. Cohen pleaded guilty to some parts of the indictment, and his plea was introduced into evidence, but it doesn't indicate evidence that others may or may not be guilty of the charges in the indictment. His plea was admitted into evidance for you to consider the weight and credibility of Mr. Cohan and consider his motives. Of course, this plea doesn't mean the other defendants were guilty. But this is a matter that you are supposed to determine.

I also didn't say specifically that the prosecutor is no different from any other party in Court, and you are to give no greater weight to the Government's evidence merely because they are called the United States of America.

In reference to whether Mr. Cohen would lie somebody else into jail in order to protect himself, I didn't cover the defense's contention, and that is he may have been lying to protect his sources.

And while it is the defense's contention that there were some other sources and not Mr. Galante, I'm not saying whether there is any evidence of any other sources. I'm just reciting the defendant's contention to be sure you have it in mind.

I will say something about Mr. Galante's prior conviction. I will repeat what I said originally. It is not a related case, and it does not decide his guilt or innocence in this case, but simply to use it for the limited purpose of his motive.

Have any other questions come to your mind that you want me to elaborate on before I send them back --

All right, continue your deliberations.

(Whereupon, the jury was excused for deliberations.)

Form A. O. 93 (Rev. Apr. 1973) Search Warrant

RJD:SD:sm
F. #751,562

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

75M 620

UNITED STATES OF AMERICA

VS.

PREMISES KNOWN AS BRISTOL BARGAIN FAIR AND THE BASEMENT THEREOF, 1662 PITKIN AVENUE, BROOKLYN, NEW YORK

Docket No. 75M

Case No. 620

SEARCH WARRANT

To TO ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION OF THE UNITED STATES DEPARTMENT OF JUSTICE.

Affidavit(s) having been made before me by Charles K. Boling, Special Agent of the Federal Bureau of Investigation

that he has reason to believe that { ~~on the person of~~ / on the premises known as } Bristol Bargain Fair, 1662 Pitkin Avenue, Brooklyn, New York, and the basement thereof.

in the Eastern District of New York

there is now being concealed certain property, namely a quantity of Precor Radios, APF Scientific Calculators and Nikkor camera lens (here describe property) in violation of Title 18, United States Code, Section 659.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of ~~10 Days~~ 48 Hours (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) / ~~at any time in the day or night~~* } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before Mary Dell Federal Judge or Magistrate as required by law.

Dated this 9th day of April, 19 75

Mary Dell

Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

I received the attached search warrant April 11, 1975, and have executed it as follows:

On April 11, 1975 at 1:30 o'clock P M, I searched the person or premises described in the warrant and

I left a copy of the warrant with Menachem Cohen
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1345 electronic calculators
767 Panorama Radios
554 Nikkon Lenses

This inventory was made in the presence of John T. Good

and Charles Boling

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Willard G. Bengtzen

Subscribed and sworn to and returned before me this 21st day of May, 1975.

Federal Magistrate

RJD:SD
F. #75L,562

75M 620

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

PREMISES KNOWN AS BRISTOL BARGAIN FAIR AND THE BASEMENT THEREOF, 1662 PITKIN AVENUE, BROOKLYN, NEW YORK

Defendant.

- - - - - - - - - - - - - - - - - X

75M 620

AFFIDAVIT FOR A SEARCH WARRANT

(T. 18, U.S.C., §659)

EASTERN DISTRICT OF NEW YORK, SS:

CHARLES K. BOLING, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Your deponent has reason to believe that there is presently being concealed in the above-described premises a quantity of cartons bearing the name Nikkor Camera Lens which cartons have been stolen from foreign commerce in violation of Title 18, United States Code, Section 659.

The facts tending to establish the grounds for the issuance for a search warrant for the above-described premises are as follows:

(1) A communication to the Federal Bureau of Investigation from a Mr. Dennis Mooney, an employee of the Greenpoint Terminal Warehouse, Inc., 49 Noble Street, Brooklyn, New York, that on March 22, 1975 the warehouse had been entered and a quantity of cartons containing Nikkor Camera Lens had been stolen. Mr. Mooney further advised that the camera lens above-mentioned had been shipped by Nippon Kogaku, Inc., of Japan to Ehren Riech Photo, Inc. of 623 Stewart Avenue, Garden City, New York, and being held at the Greenpoint Terminal Warehouse under United States Customs Bond Numbers: B 255 776, B 257 313, B 231 030.

(2) A reliable confidental informant, who has

previously supplied information to the Federal Bureau of Investigation which information has resulted in the arrest of six individuals in both the Eastern and Southern District of New York for the theft of approximately Two Hundred and Fifty Thousand Dollars ($250,000) worth of stolen merchandise, which arrests have resulted in two convictions, has stated that he was in the above-described premises known as Bristol Bargain Fair Inc., on April 7, 1975. While in the above-described premises the reliable informant observed the Nikkor Camera Lens as well as Precor Radios and APF Scientific Calculators that were stolen from the Greenpoint Terminal Warehouse on March 22, 1975.

WHEREFORE, your deponent respectfully request that a search warrant be issued authorizing Special Agents of the Federal Bureau of Investigation to enter in the day time the premises known as Bristol Bargain Fair and the basement thereof located at 1662 Pitkin Avenue, Brooklyn, New York, and there to search and seize the above-described property to the end that the same may be dealt with according to law.

Charles K. Bolang

Sworn to before me this
9th day of April 1975.

UNITED STATES MAGISTRATE
EASTERN DISTRICT OF NEW YORK

prove his innocence, but rather the Government must prove his guilt or else you must, according to the oaths you have taken, find that defendant not guilty.

Inasmuch as Mr. Cameriero is not obliged to prove anything, I am not standing here strictly telling you what we will prove, because we need not prove anything. But, I would like to suggest as the evidence comes out, you consider certain things in evaluating the question, at least as Mr. Cameriero is concerned, and he is the only person I represent in connection with these proceedings.

Number one, there will be no question Mr. Cameriero was arrested on April 11th of last year. There will also be no question that Mr. Cameriero was actually in the process of unloading goods from a store onto a truck. That is not the question before you, and that, as his Honor will tell you, in and of itself, will not justify any guilt as to the case.

THE COURT: I will instruct them as to the law in the case, Mr. Chrein.

MR. CHREIN: I will do so only briefly, in order to bring to your attention the outlines of this case.

The question of this case or the question you

will have to decide when you deliberate on the case is whether at the time that Mr. Cameriero was on that truck, whether at the time that he was handling the merchandise involved, he knew that the merchandise was, in fact, stolen.

Now, you will hear a considerable amount of evidence on the case, but as the evidence unfolds before you, I would suggest that you ask yourselves, "What does the testimony that I have heard reflect on the state of Mr. Cameriero's mind as to the stolen character of these goods. If it does not indicate to you that Mr. Cameriero knew that the merchandise he was handling on the back of the truck was stolen, of course you cannot use that evidence to convict him.

I would also ask you to consider what evidence the Government could bring to this courtroom to show that Mr. Cameriero knew that the merchandise was stolen, and if there is evidence that you feel is within the reach, within the grasp of the Government that has not been brought, you may consider that also in deciding what your verdict will be in regard to my client.

Another element that you might consider is, as you hear, is testimony. You might want to ask yourselves what motive Mr. Cohen would have to tell the

truth, and what motive Mr. Cohen would have not to tell the truth. If you feel that Mr. Cohen is in a position to gain by being less than honest with you, you can consider that when you deliberate on the fate of my client.

If you feel that Mr. Cohen can benefit in some way by producing a person in this court, be he innocent or guilty, to accuse of the crime of knowing possession of this merchandise, of course Mr. Cohen's motives to tell the truth, and Mr. Cohen's motives to lie should be considered. Mr. Cohen's motives to benefit, Mr. Cohen's hopes of freedom, Mr. Cohen's hopes of leniency, because I believe the evidence will tend to show that Mr. Cohen is involved with this merchandise, and that Mr. Cohen, I believe, out of his own mouth will tell you that he knew the merchandise was stolen.

He knew the merchandise in his store was not legitimate merchandise. So ask yourselves if Mr. Cohen has a motive to name a person who may be innocent as an accomplice, if Mr. Cohen might have a motive to conceal somebody's identity.

THE COURT: I don't believe somebody.

MR. CHREIN: I would just merely state. Ask

yourselves as the evidence unfolds if there is anything besides Mr. Cohen's testimony that points to the guilt of my client or that points to my client's knowing the possession of contraband, and if at the end of the case you have not been convinced beyond a reasonable doubt that my client was the knowing possessor of stolen merchandise, I submit that your only obligation to this case would be to find him not guilty.

THE COURT: Mr. Wales.

MR. WALES: Yes, your Honor.

Judge Judd, colleagues, Madam Forelady, ladies and gentlemen of the jury. My name is Eliot Wales. I represent John Galante and only John Galante and so, of course, in my presentation of this case to you, I am going to be focusing only on the evidence that pertains to John Galante.

Of course the question of guilt or innocence is a personal one. Of course you are going to have to judge each defendant separately, and I am going to ask you on my behalf, of course, only to focus on John Galante, and only to consider the evidence and argument and intentions with respect to John Galante.

Now, John Galante has pleaded not guilty to that charge on another day in this court. He has denied that

he had violated the law. He has denied the Government intentions. He has denied that he is criminally responsible in this transaction about which you are to hear some evidence.

This is a criminal case. The Government has a very high burden of proof, and I'm going to ask you to hold the Government to that high burden of proof.

The Government wishes to reveal in this case they must persuade you if they can from the evidence of guilt beyond a reasonable doubt, so that after you hear all the evidence and all the contentions and you find the Government hasn't convinced you beyond a reasonable doubt as to the guilt of the defendant John Galante, and of course you will have to render a verdict of not guilty.

Now, this case involves -- the Government's case is pretty much going to rest on the testimony of Manny Cohen, who is a co-defendant in this case, but of course he is not standing on trial at this time. Manny Cohen knows to come in and tell you that he, himself, was involved in a criminal transaction on this day in April; that he was in possession of stolen goods and he got caught with the stuff, and I am not going to dispute, one iota, his testimony.

Manny Cohen comes to the stand. He tells you he's the possessor of stolen goods. He's a thief. And I accept his testimony. Then, Manny Cohen is going to go one step further. He is going to say to you, "I had a partner. The fellow who brought me the stuff, who was just as much involved with me as I was," and he is going to say his name was John Galante.

At this point, of course, that contention we reject.

Now, the Government's case is not going to depend upon whether there were stolen goods, because we don't dispute that. We are not going to be judging the question of whether Manny Cohen is guilty or not, because he is going to get on the stand and tell you he is guilty. We have to determine from Manny Cohen's testimony whether John Galante is guilty or not.

To a great extent, you are going to have to determine that question by judging Manny Cohen's testimony. Not just the words he says, but the quality of the testimony.

After all, Manny Cohen's credibility is on the line. He is asking you to believe him, and you have to believe him, if you can get yourself in a position of convicting John Galante, and if you can't believe

Manny Cohen, then of course the Government case is going to crumble. It depends almost solely, exclusively, on Manny Cohen.

Now, we are going to show you the type of man that Manny Cohen is. I am going to show you that he is a thief and a liar and a dealer in stolen goods, and I am going to show you that he got caught in a couple of cases, and that he realized that for himself the number was up. And I'm going to show you that Manny Cohen desperately tried to make a deal with the FBI, to make a deal with the Government.

I am going to show you the pressure that's on Manny Cohen, for Manny Cohen doesn't want to go to prison. Manny Cohen is not a citizen in the United States. He doesn't want to be deported from where he came.

(Continued on next page.)

Manny Cohen knows or strongly suspects that if he gets on the stand and gives a name as to who his source is, that this will save him from going to prison and save him from being deported, and, of course, he has a strong, the strongest possible motive, to save himself. But, we will show you that Manny Cohen is not an honest man. Not only does he deal in stolen goods, but we will show you that in the course of these dealings he wasn't fair and square with the government agents. We will show you the week before, on April 4th, when he was first arrested, how he lied to the government agents. April 9th, when the government agents came around, he was still playing games with them, and it wasn't until the end of that day, April 9th, when Manny Cohen saw that he, himself, was in terrible trouble. He came to the conclusion that he better save his own neck and he better give some name of the source from whom he gets his stolen goods. Manny Cohen has always made known in stolen goods, and obviously he is not going to give up his good sources, and he gives a name of someone who is not involved. How easy it is for him to give the name of John Galante to

save himself from going to prison, and that was the type of motive, pressure, to come in and tell us a tale by Manny Cohen to save his own neck.

So, I think when you hear the evidence, and of his Honor's charge about the burden of proof on the government, the heavy burden of proof, the reasonable boundary that the government has to overcome if they wish to prevail, and if you wish that the governments's case is depending on a man like MANNY COHEN, he is a thief and a scandral and a lier, I think that you will come to the conclusion that the government's case is really weak and it is not made of the type of quality that would warrant this to the jury in bringing him a conviction, and that by applying the law, applying the evidence, that you will come to the conclusion that the government just hasn't met its burden of truth, and that would be your job to write in a verdict of not guilty. Thank you.

THE COURT: All right, Mr. Alderstein. You can proceed.

MR. ALDERSTEIN: Yes, your Honor. The government at this time would call MR. AKIRA FUJII to the stand. AKIRA FUJII, having first

THE CLERK: The United States versus Galante and Cameriero.

THE COURT: Good morning.

MR. WALES: Good morning, Your Honor.

Your Honor, earlier this morning I alerted your Chambers to a case called the U.S.A. versus Goodwin, 492 FED Second 1141 at page -1151 to 1155. It is a Fifth Circuit CAse dealing with a discussion of the legal tests to be applied by district judges in deciding whether to admit or not admit evidence of a prior crime.

It was a very thorough and interesting discussion. It focused on the several key factors.

It is one of the few key cases which the Federal Court of Appeal has reversed a district judge.

I am asking Your Honor to read that case.

THE COURT: I have read the Fifth Circuit Case and --

MR. WALES: The Fifth Circuit is one of the Circuit and part of the Federal Court.

I am asking Your Honor to reconsider your decision in light of the Goodwin case.

THE COURT: I am not bound by the Fifth Circuit. I am aware that the Fifth Circuit is a

highly respected Court of Appeals, although, I don't always agree with them, but I have to follow them.

MR. WALES: On the other hand, it was a very thorough analysis of the issue, and I ask Your Honor to reconsider your decision in light of the Goodwin case.

THE COURT: Well, I have read the Goodwin case and that seems to be different from this one because there they said the Government had no need for the evidence. Here, you start out by saying that Mr. Galante had nothing to do with the case. Now, the Government is going to produce evidence, not only the testimony by Mr. Cohen that he was, in fact, there on the 10th of April, and I think the Government has a right to show evidence with respect to his intent and/or motive in being there as bearing on his knowledge. I don't think the Goodwin case is decisive.

MR. WALES: With respect to the Government's proposed evidence of the judgment of the prior judgment of conviction with regard to Rule 803 (22) of the Federal Rules of Evidence, a judgment of a prior conviction falls within the exception to the hearsay rule. If that judgment is necessary to " prove any fact essential to ascertain the judgment"

I submit, Your Honor, in the context of this case that the judgment of the prior judgment of conviction of 1972 is not essential to establish any fact essential to ascertain a conviction in this case, Your Honor. I think that the Government is really looking--

THE COURT: It is not hearsay in this case. It is a witness. The judicial notice is right here in the court.

MR. WALES: It is not a question of judicial notice. Of course Your Honor on this can take now judicial notice.

THE COURT: Judicial notice has been brought to the attention of the jury in this case.

MR. WALES: I understand it is no longer a judicial notice, it becomes a question of evidence that has to either fall within the exception of the hearsay rule, or the other excluded.

THE COURT: Supposing we have Mr. testify as a clerk that he was here on such and such a date and received the verdict.

MR. WALES: It is not a question of authenticity. I will concede for this limited purpose that the record of this court is accurate. It is a question of whether the jury is going to hear evidence of a

prior transaction, the evidence being in the form of a judgment of a prior conviction.

THE COURT: Why don't you and Mr. Adlerstein work out a Stipulation reciting that there is such a judgment.

MR. WALES: I am objecting to it being received. I don't want a Stipulation.

THE COURT: I have ruled that it is receivable.

MR. WALES: I understand that. But my argument now is, I just ask Your HOnor through your Chambers earlier to make a further argument. And the further argument is pursuant to Rule 803(22) that the conviction in this particular case, the judgment of conviction need not be admitted.

THE COURT: Supposing I have Mr. read the testimony of the agents who testified against him in the last case.

MR. WALES: It is hearsay.

THE COURT: No, that was testimony that was taken in cross examination against this defendant.

MR. WALES: It is still hearsay because it is testimony from the prior trial. It is not testimony in this case. It will be hearsay if the witnesses were unavailable, that could be something else, that would have to make a strong unavailability

of witnesses.

THE COURT: The Government claims surprise that they didn't anticipate having to bring them here.

If you won't work out a Stipulation, I will permit the receipt of the judgment.

MR. WALES: Your Honor misunderstood my position.

THE COURT: Your position is that after I ruled the fact is admissable, you want to prevent the fact from coming in.

MR. WALES: I wanted to make an additional legal argument, that is all. If Your Honor wishes to reject my argument, I am satisfied that I have done what I can as an attorney. I made the argument based upon Rule 803(22) that this judgment does not meet the test of this case. I am not prepared to Stipulate anything with Mr. Adlerstein. Not that I am a disagreeable fellow, I believe that as a matter of law my position is clear and I cannot make a Stipulation.

MR. ADLERSTEIN: I believe Mr. Wales has misread the Rule. I think the Rule clearly states that a prior judgment is admissable to show anything that was necessary to prove in getting that prior

judgment. And I think that is exactly what is recited in the judgment of conviction. And as Your Honor said yesterday it is admissable under the Rule. And I think Mr. Wales has misread it.

MR. WALES: I am not sure that I misread it.

THE COURT: Well, you are doing your best to create legal obstacles to the Government's proof.

MR. WALES: I don't look at my role as that. I think counsel's job is a little more worthy and credible than not just throwing up hurdles, Your Honor.

THE COURT: I don't think it is a good legal argument.

MR. WALES: Sometimes I am wrong, and sometimes I am right.

MR. CHREIN: On the other issue yesterday Mr. Adlerstein agreed to produce the agent who was the author of the fingerprint. The Government has made evidence about this, and I understand that the agent is confined to bed and is ill and will not be available for some time. Now, I understand that, and rather than delay the trial, the fairest procedure I believe, confirming that the agent is on notice, perhaps the Government would consent to a Stipulation that if Mr. Cummins -- is his name?

inside the store, isn't that right, Agent?

A That's right.

MR. WALES: I have no further questions, Your Honor.

MR. ADLERSTEIN: I have no other questions, Your Honor.

THE COURT: You may step down.

(Whereupon the witness was excused).

MR. ADLERSTEIN: Your Honor, at this time the Government would wish to move into evidence a document which I believe Your Honor has seen --

THE COURT: Let me see it.

(Whereupon the document was given to the court).

MR. ADLERSTEIN: Marked as Government's Exhibit 22 for identification.

The Government would move to have it admitted in evidence at this time.

THE COURT: Well, I have ruled in the abstract in question before. I suppose we can take a look at it at a side bar.

(Whereupon the court, counsel and court reporter conferred at the side bar, as follows)

THE COURT: I am not sure that the sentence

is material. I don't know whether you want it in or not because the sentence would indicate that is on parole.

MR. WALES: Your Honor modified the sentence subsequent, and I have a copy of the modification.

MR. ADLERSTEIN: I have no objection.

THE COURT: If you want that modification, that is all right. I thought maybe you could just read through to it is adjudged that he is guilty as charged without the penalty. That may serve the purpose.

MR. WALES: May the record reflect that I object to the introduction of this into evidence. I object for the reasons that were advanced in a lengthy argument previously.

Obviously Your Honor doesn't wish me to repeat what I said.

THE COURT: No.

MR. WALES: But I would say for the record I do repeat what I said before.

Now, at this time, of course, I would ask Your Honor with regard to the receipt of this evidence that you simultaneously give the instruction, limited instruction to the jury that I suggested, as to the limited purpose for which it is to be

received. And what regard the jury can consider it. And what regard the jury can not consider it.

MR. CHREIN: I have one request. I believe it is appropriate to give a limited instruction that this evidence in no way pertains to the defendant Cameriero.

THE COURT: Yes, I will do that.

MR. ADLERSTEIN: In what form does Your Honor want to block it out and Xerox it?

THE COURT: I would just read through to guilty as charged.

MR. ADLERSTEIN: I would like the jury to have a copy of the Xerox.

MR. CHREIN: It can be blocked out and Xeroxed before the jury goes in for deliberations.

THE COURT: Just block out the punishment.

MR. ADLERSTEIN: All right.

May I have the Clerk read it?

THE COURT: Yes.

(Whereupon the side bar was concluded and counsel returned to counsel's respective seats at counsel's table, and the hearing resumed, as follows:).

THE COURT: Ladies and gentlemen, at the present time I am going to have the Clerk read this document rather than have it passed around to the

jurors because it may take a little while.

Let me say also since this relates to the prior conviction of Mr. Galante, number one, it has nothing to do with Mr. Cameriero. It should not be considered against him.

And number two, it is not admissable for any purpose relating to Mr. Galante's good or bad character.

I have received it only in connection with the bearing that it may have on his knowledge or intent or motive in connection with the transaction as testified to by Mr. Cohen, and to his presence in the store as testified to by Mr. Armstrong to the extent that you may believe those. And if you find that it does not have any bearings on his motive or intention, you will just disregard it. But as I have said, the Government can have it read to you.

MR. WALES: Would Your Honor instruct the jury that it is not a related case?

THE COURT: I think it is proper to say that this is an entirely separate matter.

A date almost two years earlier. So it does not bear on the guilt or innocence of this particular defendant.

THE CLERK: Government's Exhibit 22 in

evidence at the top reads:

" Judgment and comment The United States District Court for the Eastern District of New York, United States of America versus John Frank Galante also known as Chubby, number 72 CR 1211.

On this 22nd day of June, 1973, came the attorney for the Government and the defendant appeared in person and with counsel.

It is adjudged that the defendant upon his plea of a verdict of guilty has been convicted of the offense of violating T-18, U.S.C. Section 659, in that on or about September 1, 1972, the defendant knowingly did have in his possession chattels of a value in excess of $100. That is, fifty cartons of sweaters and fourteen cartons of headphones, which chattels had been embezzled and stolen while the said chattels were moving as, were apart of and constituted a foreign shipment of freight and express from Pusan, Republic of Korea, and Yokohama, Japan to New York, State of New York, the defendant knowing said chattels to have been stolen.

As charged in Count One, and the court having asked the defendant whether he had anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or

appearing to the court, it is adjudged that the defendant is guilty as charged and convicted."

THE COURT: You may proceed, Mr. Adlerstein.

MR. ADLERSTEIN: At this time the Government calls Alfred Kramer to the stand.

A L F R E D K R A M E R, having been duly sworn in by the Clerk of the Court, testified as follows:

THE CLERK: Would you state your full name for the record, please?

THE WITNESS: Alfred R. Kramer, Jr.,K-r-a-m-e-r.

MR. WALES: What is your first name?

THE WITNESS: Alfred.

DIRECT EXAMINATION

BY MR. ADLERSTEIN:

Q Mr. Kramer, by whom are you employed?

A The Federal Bureau of Investigation.

Q Where are your headquarters, Sir?

A In Washington, D.C.

Q What is your title?

A I am a fingerprint specialist.

Q How long have you been so employed?

A I have been employed with the FBI for ten years.

Q And what are your official duties?

The Government has introduced into evidence, and you will have an opportunity to have with you in the jury room a copy of the conviction of Mr. Galante which came down in June of 1973, which states:

" That on or about September 1, 1972, the defendant --" that is Galante, " Knowingly did have in his possession chattels of a value in excess of $100.00, that is fifty cartons of sweaters, and fourteen cartons of headphones, which chattels had been embezzled and stolen while the said chattels were moving as, were part of, and constituted a foreign shipment of freight and express from Pusan, Republic of Korea, and Yokahama, Japan to New York, State of New York, the defendant, knowing said chattels to have been stolen."

The conviction was in 1973.

Ask yourselves about that conviction. Think about it when you ask yourselves the fact of whether or not Mr. Galante knew these goods were stolen. What Mr. Galante's motives were. What his purpose of being there on April 10th, 1975? Ask yourselves about that conviction in considering those factors.

Mr. Cameriero-Ramsey admits now that he made a false statement to the FBI.

going to go pretty far to find out, and he does lie to protect his source and his business. And he has got to protect his friends and his associates. He has got to give the FBI someone, so give them John Galante. Cohen would like you to think that he doesn't know what's going on but I submit to you that he is a phony. He is smart. He is clever. He is cunning. He fooled the FBI. Mr. Colgan recognized that he lied to him, he recognized that on April 4th. But he is still willing to believe him a week later because he wanted to believe Manny Cohen.

Now, the Government made an argument that it was actually Galante who chose Manny Cohen. I submit to you that that is only what Cohen tells you, and that Galante, of course, denies it. And the whole Government's argument when dealing with Cohen the Government witness, that is all we know, and all we know what this fellow tells us, it means something only if he is a truthful and credible person.

Now, I think I may say something about the Government's case, and no reflection on Mr. Adlerstein, Government's counsel who presented. It has no reflection on him. It depends basically on Manny.

Now, with respect to the prior convicton, it

was a conviction of 1972. You heard the court clerk read it, and it is totally unrelated case. I believe that when the judgment was read to you at that time Judge Judd did tell you that. It is obviously a case that took place some time ago, and Galante has paid his debt to society. It was submitted to you for your consideration on a limited grounds. You are to consider it only with respect to possible motive on the part of his participation in the transaction. Or knowledge on the part of Galante's participation in the transaction, or part of a common plan or scheme on the part of Galante's participation in the transaction.

I submit to you that it is our position that Galante did not participate in this transaction in any way. We take the position that if he participated that he thought it was a good transaction. And that it is our position that Manny Cohen's testimony as it pertains to the activities to Galante is sheer nonesense.

It is our position that Galante did not participate in the transaction at all.

I submit to you that when you evaluate his 1972 conviction you will see it really isn't relevant in any way to motive, knowledge, common plan

or scheme. And, of course, Judge Judd will tell you that if you find that it is not related in any way to motive, knowledge, or common scheme, you are to disregard it. Obviously, we are not trying the 1972 case. We are trying a 1975 case and in the year 1976.

Now, with regard to the fingerprints after all of the testimony, and after all of the theories, it really comes down to the fact that the FBI made a search of any of these cartons and they found the fingerprints, recognizable fingerprints of value, and they compared them with Galante's fingerprints and lo and behold it was not him. There is not a single Galante fingerprint on any of the dozen or so boxes that were introduced into evidence.

You can be sure that if his fingerprints were found on one box we would have three FBI agents in this courtroom testifying to it. Yet, of course, told you that at the end of March Galante was in there unloading those boxes and storing them in the basement. I submit to you that that is not the case.

Now, you may have noticed, of course, that John Galante did not testify in this case. That was my decision. I am at fault, if there is anyone to fault, fault me. I am the attorney, and I call

During my earlier statement I think I covered the ground that I just recall you back to now when defence counsel argued why would Mr. Cohen be telling the truth now when he lied on April 4th. I submit that it is a very simple reason. And that is the fact that the goods were found in the store on the 9th, and the fact that by the 9th he would have been able to realize that the gig was up, and the only way to help himself was to tell the truth. And the fact that he is appearing now before the judge who is going to sentenced him on a substantial jail sentence. I suggest to you all of these facts are factors which led him to tell the truth, and not factors which led him to lie.

Mr. Wales make the argument that the prior conviction of Mr. Galante doesn't really have any relevance to the case. I sumit to you, Ladies and Gentlemen that when you look at the prior conviction ask yourselves doesn't it have something to do with the case in the sense that why isMr. Galanta there on April 10th? I think you can answer that question. Did he go there on the 10th as a decent patron of Mr. Cohen and not trying to manipulate other people and the FBI; or was he going there for reasons for which we know? That prior conviction has an owful lot to say.

What it comes down to Ladies and Gentlemen of the

or with anyone else. Don't talk at all the people in the courtroom. I would ask you to be back here tomorrow at 10:00 o'clock.

Thank you.

MR. WALES: I have an application to make, Your Honor.

THE COURT: Yes.

MR. WALES: I move for a mis-trial. The Government in its summation to the jury mentioned the prior conviction on several occasions, and went into it at great length, and, Your Honor, I think utilized it in a way that could be very easy for the jury to convict Galanta in this case because of the prior conviction. I think the Government's summation demonstrates the prejudice that could come as a result of Your Honor admitting that conviction into the evidence. On the strength of that, Your Honor, I move for a mis-trial.

THE COURT: Well, I think there hasn't been an undue amount of emphasis mentioned. You covered it at some length, and he came back on it. I think this is proper rebuttal, and I suppose it might have added to the effect. But I think I pointed out the limits that there are on the consideration to be given.

I will deny the Motion for a mis-trial.

I will see you all tomorrow morning at 10:00.

CERTIFICATE OF SERVICE

Aug 27, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Peggy Sturdy Barker